

**In the  
Supreme Court of Indiana**

|                                  |   |                                    |
|----------------------------------|---|------------------------------------|
| <b>IN THE MATTER OF</b>          | ) |                                    |
|                                  | ) |                                    |
| <b>THE HONORABLE</b>             | ) |                                    |
|                                  | ) |                                    |
| <b>THOMAS NEWMAN, JR.</b>        | ) | <b>Cause No. 48S00-0607-JD-274</b> |
|                                  | ) |                                    |
| <b>JUDGE OF THE</b>              | ) |                                    |
|                                  | ) |                                    |
| <b>MADISON SUPERIOR COURT #3</b> | ) |                                    |

**NOTICE OF THE INSTITUTION OF FORMAL PROCEEDINGS**

**AND**

**STATEMENT OF CHARGES**

The Indiana Commission on Judicial Qualifications, having found sufficient cause for formal disciplinary proceedings, now notifies the Honorable Thomas Newman, Jr., Judge of the Madison Superior Court #3, of the filing of these charges. These charges are brought under Admission and Discipline Rule 25 and before the Indiana Supreme Court, which, pursuant to Article 7, Section 4, of the Constitution of Indiana, has original jurisdiction over the discipline, suspension, and removal of all judges of this State. Judge Newman may file a written Answer within twenty days of service of this Notice.

**Summary of Charges**

In October 2000, Judge Newman sentenced Lance Dawson to six years in the Department of Corrections. In July 2001, the Court of Appeals found the incarceration was

contrary to law, and Dawson was to be released. However, Judge Newman neglected to order Dawson's release; as a result, Dawson unnecessarily spent fourteen additional months in prison after the Court of Appeals decision. The Commission charges that Judge Newman was so indifferent to the need to prepare an order for Dawson's release as to constitute such serious neglect that he violated the Code of Judicial Conduct. He further violated the Code when, later, he variously assigned responsibility for his neglect not to himself but to his court reporter, the Department of Corrections, and the Court of Appeals.

### **Background**

1. At all times pertinent to these charges, Judge Newman was Judge of the Madison Superior Court #3.

2. The Madison Superior Court #3 criminal case underlying these charges is *State v. Dawson*, Cause Number 48D03-8911-CF-153.

3. In *State v. Dawson*, Lance Dawson ("Dawson") pled guilty to burglary in 1990. Judge Newman sentenced him to six years incarceration, but suspended the sentence and ordered Dawson to probation for three years.

4. On October 12, 2000, six years after Dawson's three-year probationary term presumably had expired, the State filed a motion for probation violation and asserted that an unresolved 1992 probation violation petition had "tolled" or extended Dawson's probationary term.

5. Judge Newman presided over the probation violation hearing on October 23, 2000. He found that Dawson violated probation, revoked the probation, and ordered

Dawson's incarceration in the Department of Corrections ("DOC") for the duration of his original six-year term. Dawson was incarcerated in the DOC on November 8, 2000 until his release on September 6, 2002 after he served his full sentence with adjustments for credit time.

6. In *Dawson v. State*, Dawson appealed Judge Newman's decision. His appellate attorney argued that Judge Newman revoked Dawson's probation for alleged conduct occurring after Dawson's original sentence expired and that, therefore, the revocation and incarceration were improper.

7. The Court of Appeals agreed with Dawson and concluded that Judge Newman erred when he revoked Dawson's probation and sentenced him to the DOC. The court remanded the case back to Judge Newman for further proceedings consistent with the opinion.

*Dawson v. State*, 751 N.E.2d 812 (Ind.App. 2001).

In a concurring opinion, the Honorable Carr Darden wrote:

Whereas I wholeheartedly agree with the majority's decision in this case, I write to explain that I think we should go further by ordering the immediate release and discharge of the defendant in this case. It is obvious the state has presented its strongest case for revocation of probation and has failed. The remote possibility that the defendant could be incarcerated another day longer while the state reviews our ruling on remand, for further proceedings consistent herein, offends my sense of fair play under the facts in this case. There is no evidence that supports further delay by the state for keeping the defendant locked up. I would order immediate release and discharge. *Id. at 7.*

8. On July 18, 2001, the Court of Appeals sent to Judge Newman's court, by facsimile, a "courtesy copy" of its opinion.

9. Judge Newman's court reporter brought the opinion to his attention, particularly

Judge Darden's concurring opinion. According to the court reporter, Judge Newman told her to arrange Dawson's release, but did not instruct her to prepare an order.

10. The court reporter contacted Dawson's appellate attorney and advised him of the outcome of the appeal.

11. The court reporter contacted a DOC employee, and sent him the opinion by facsimile.

12. Based upon that information, the DOC transferred Dawson from a Kentucky facility to Indiana, noting on a DOC document, "Possible Release Per Court of Appeal [sic] Decision."

13. The court reporter created the following entry on the chronological case summary stating:

Opinion – for publication handed down by the Indiana Court of Appeals concluding that trial court improperly revoked defendant's probation and remands for further proceedings...Further, Judge Darden...[finds] that there is no evidence that supports further delay by the State for keeping the defendant locked up and would order immediate release and discharge in this matter. Judge Newman agrees and orders defendant released from DOC.

14. Judge Newman has been a judge with jurisdiction over criminal cases for approximately thirty years and knows that the DOC will not release an inmate without a court order. Judge Newman never issued an order for Dawson's release, nor did he mention it again to his court reporter or ensure that she prepare an order for his signature.

15. Judge Newman advised the Commission that, after the initial conversation with his court reporter, "It just went away." "I don't recall it ever coming back to my attention."

16. As a result of Judge Newman's neglect and failure to produce an order for

Dawson's release or to ensure that his court reporter prepare an order for his signature, Dawson served fourteen additional months in prison after the Court of Appeals decision, followed by one year of parole supervision.

17. In September or October of 2002, having learned from his appellate attorney that he prevailed on appeal in July 2001, Dawson provided his parole officer with a copy of the Court of Appeals opinion. At that time, Dawson had been released from the DOC, but continued unnecessarily under parole supervision.

18. The parole officer took the opinion to Madison Superior Court #3 and asked the court reporter to speak to Judge Newman and "give me some direction." She inquired again a few days later; her memory is that the court reporter told her that she had "sent something to the prison" and "it had been taken care of."

19. The parole officer's inquiry did not prompt Judge Newman or his court reporter to take any action in the *Dawson* matter.

20. In January 2003, Judge Newman received a Notice of Tort Claim advising him of Dawson's civil claim against him. At that time, Dawson still unnecessarily was under parole supervision. Judge Newman wrote on the face of the Notice, "Place in Dawson file."

21. The receipt of the Notice of Tort Claim did not prompt Judge Newman or his court reporter to take any official action in the *Dawson* matter. However, after his receipt of the Notice of Tort Claim, Judge Newman instructed his court reporter to contact the DOC to determine why Dawson had not been released in 2001. She did so, and was advised that the DOC did not know why Dawson had not been released in 2001.

22. The court reporter's inquiry to the DOC in January 2003 did not prompt Judge Newman or his court reporter to take any action in the *Dawson* matter.

23. Dawson filed a disciplinary complaint against Judge Newman with this Commission alleging that Judge Newman's neglect led to his illegal incarceration in the DOC for fourteen months after the Court of Appeals opinion.

24. During the Commission's subsequent investigation, Judge Newman provided written statements to the Commission and submitted to an oral deposition.

25. Judge Newman also testified in a deposition in Dawson's civil suit in October 2005, prior to the Commission's investigation.

26. In that deposition, Judge Newman testified he did not remember the *Dawson* case or the Court of Appeals opinion, but "would have" told his court reporter "what to do" in response to the opinion. He did not know if he had ordered Dawson's release and testified, "That's her bailiwick." "That's her responsibility, to generate the paperwork effectuating...my decision."

27. However, just over four months later, Judge Newman advised the Commission that he did recall the *Dawson* reversal and that he "decided to take immediate action" when he read the Court of Appeals opinion. "I directed [my court reporter] to order Mr. Dawson to be released."

28. Judge Newman never has reprimanded or admonished his court reporter in any way concerning his claim that he directed her to prepare an order releasing Dawson.

29. Judge Newman said, "It was a very unfortunate situation that Mr. Dawson

remained in the Department of Corrections beyond the Court of Appeals decision. There seemed to be several factors that ended up causing Mr. Dawson to be somewhere for a period of time where he did not want to be.”

30. Judge Newman also stated to the Commission, “I think what happened is...the DOC got in the way. Which may have kept [Dawson’s release] from happening...No, they didn’t have an order. And it’s just speculation as to if they would have complied with it or not complied with it.”

31. Judge Newman also said, “If the Court of Appeals had desired that I immediately release Mr. Dawson, the Appeals Court could have so ordered.” In his deposition before the Commission, he testified, “I blame the Court of Appeals. That’s who I blame. If they would have done what their appellate rules would provide...He would have been out of prison. I really think I’m being a scapegoat in this thing.”

### **CHARGE**

The Commission alleges that Judge Newman not only neglected to execute the appropriate order for Dawson’s release, but that he did not properly supervise and instruct his court reporter in response to the *Dawson* opinion, has exhibited no meaningful remorse or concern for the effects of his neglect on Dawson’s liberty, and, over time, has assigned blame for what occurred never to himself, but to his court reporter, the DOC, then the Court of Appeals.

The Commission charges that Judge Newman violated Canons 1 and 2 of the Code of Judicial Conduct, which require judges to uphold the integrity of the judiciary and enforce

high standards of conduct, to respect and comply with the law, and to act at all times in a manner promoting public confidence in the integrity of the judiciary; that he violated Canon 3B(9) of the Code of Judicial Conduct, which requires judges to dispose of all judicial matters fairly, promptly, and efficiently; that he violated Canon 3C(1) of the Code of Judicial Conduct which requires judges diligently to discharge their administrative responsibilities; that he violated Canon 3C(2) of the Code of Judicial Conduct, which requires judges to hold their court staffs to the same standards of diligence which apply to judges, and that he committed conduct prejudicial to the administration of justice.

WHEREFORE, the Commission respectfully requests that, upon the filing of Judge Newman's Answer, the Indiana Supreme Court appoint three Masters to conduct a public hearing on the charge that Judge Newman committed judicial misconduct as alleged, and further prays that the Supreme Court find that Judge Newman committed misconduct and that it impose upon him the appropriate sanction.

Respectfully submitted,

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DATE

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Indiana Commission on  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this "Notice of the Institution of Formal Proceedings and Statement of Charges" was sent by facsimile and certified mail to the Honorable Thomas Newman, Jr., Madison Superior Court #3, 16 East Ninth Street, #409, Anderson, Indiana 46016 on this \_\_\_\_\_ day of July, 2006.

\_\_\_\_\_  
DATE

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